

## § 1.326

## 21 CFR Ch. I (4–1–12 Edition)

request for review may not be submitted to obtain a registration number.

(2) A request may be submitted only by the carrier, submitter, importer, owner, or ultimate consignee of the article. A request must identify which one the requestor is.

(3) A request must be submitted in writing to FDA and delivered by fax or e-mail. The location for receipt of a request is listed at <http://www.fda.gov>—see Prior Notice. A request must include all factual and legal information necessary for FDA to conduct its review. Only one request for review may be submitted for each article under hold.

(4) The request must be submitted within 5-calendar days of the hold. FDA will review and respond within 5-calendar days of receiving the request.

(5) If FDA determines that the article is not from a facility subject to the requirements of section 415 of the act, it will notify the requestor and CBP that the food is no longer subject to hold under section 801(l) of the act.

(k) *International mail.* If an article of food that arrives by international mail is from a foreign facility that is not registered as required under section 415 of the act and subpart H of this part, the parcel will be held by CBP for 72 hours for FDA inspection and disposition. If the article is placed under hold under section 801(l) of the act and there is a return address, the parcel may be returned to sender marked “No Registration—No Admission Permitted.” If the article is under hold and there is no return address or FDA determines that the article of food in the parcel appears to present a hazard, FDA may dispose of or destroy the parcel at its expense. If FDA does not respond within 72 hours of the CBP hold, CBP may return the parcel to the sender marked “No Registration—No Admission Permitted” or, if there is no return address, destroy the parcel, at FDA expense.

(l) *Prohibitions on delivery and transfer.* Notwithstanding section 801(b) of the act, while an article of food is under hold under section 801(l) of the act, it may not be delivered to the importer, owner, or ultimate consignee. If an article of food is no longer subject

to hold under section 801(l) of the act, entry may be made in accordance with law and regulation.

(m) *Relationship to other admissibility provisions.* A determination that an article of food is no longer subject to hold under section 801(l) of the act is different than, and may come before, determinations of admissibility under other provisions of the act or other U.S. laws. A determination that an article of food is no longer under hold under section 801(l) of the act does not mean that it will be granted admission under other provisions of the act or other U.S. laws.

### Subpart J—Establishment, Maintenance, and Availability of Records

SOURCE: 69 FR 71651, Dec. 9, 2004, unless otherwise noted.

#### GENERAL PROVISIONS

#### § 1.326 Who is subject to this subpart?

(a) Persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States are subject to the regulations in this subpart, unless you qualify for one of the exclusions in § 1.327. If you conduct more than one type of activity at a location, you are required to keep records with respect to those activities covered by this subpart, but are not required by this subpart to keep records with respect to activities that fall within one of the exclusions in § 1.327.

(b) Persons subject to the regulations in this subpart must keep records whether or not the food is being offered for or enters interstate commerce.

#### § 1.327 Who is excluded from all or part of the regulations in this subpart?

(a) Farms are excluded from all of the requirements in this subpart.

(b) Restaurants are excluded from all of the requirements in this subpart. A restaurant/retail facility is excluded from all of the requirements in this subpart if its sales of food it prepares and sells to consumers for immediate consumption are more than 90 percent of its total food sales.